UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DISTRICT

CHARLES SWEENEY, JR.,	)
PETITIONER	)
	)
VS.	)NO. NA 00-72-C-B/S
	)
STEVE CARTER,	)
RESPONDENT	)

JUDGMENT

The court, having this day made its Entry,

IT IS THEREFORE ADJUDGED that the petitioner take nothing by his petition for a writ of habeas corpus and this action is **dismissed with prejudice**.

/s/ Sarah Evans Barker
SARAH EVANS BARKER
Judge, United States District Court

Date: February 27, 2002

Copies to:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

CHARLES SWEENEY, JR., PETITIONER	)	
VS.	)	NO. NA 00-72-C-B/S
STEVE CARTER, RESPONDENT[1]	)	

ENTRY DISCUSSING PETITION FOR WRIT OF HABEAS CORPUS

For the reasons explained in this Entry, the petition of Charles Sweeney, Jr. for a writ of habeas corpus must be **denied**.

I.

In the exercise of its *habeas* jurisdiction, a federal court may grant relief only if the petitioner shows that he is in custody "in violation of the Constitution or laws of the United States." 28 U.S.C. §2245(a). When a habeas petition is filed after enactment of the Antiterrorism and Effective Death Penalty Act (AEDPA) on April 24, 1996, that Act's restrictions on federal review of state court rulings apply to the case. *See Terry Williams v. Taylor*, 529 U.S. 362 120 S. Ct. 1495 (2000). Under the AEDPA, a federal court must deny a habeas petition on a claim adjudicated on the merits in state court unless the state court adjudication:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of,

clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d)

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[1] The Current Indiana Attorney General, Steve Carter, named in his official capacity only, is **substituted** as the respondent pursuant to Rule 25(d) of the *Federal Rules of Civil Procedure*.

In *Williams*, the Court definitely interpreted the revised standards of review set out in § 2254(d), holding as follows:

> [Section] 2254(d)(1) places a new constraint on the power of a federal habeas court to grant a state prisoner's application for writ of habeas corpus with respect to claims adjudicated on the merits in state court....Under the "contrary to" clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by this Court on a question of law or if the state court decides a case differently than this Court has on a set of materially indistinguishable facts. Under the "reasonable application" clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from this Court's decision but unreasonably applies that principle to the facts of the prisoner's case.

Williams, 529 U.S. at 413, 120 S. Ct. at 1523. In addition, though

> [a] petitioner can also attack a state court's adjudication on the grounds that it is based 'on an unreasonable determination of the facts,' but such attacks are accompanied by a rigorous burden of proof: state court factual findings are presumed to be correct unless the petitioner rebuts the presumption with 'clear and convincing' evidence. [28 U.S.C.] §2254(e)(1)....

Sanchez v Gilmore, 189 F.3d, 619, 623 (7th Cir. 1999).

II.

A.

On March 30, 1994, an Information was filed in the Clark Circuit Court charging Sweeney with the May 28, 1991, murder of Daniel D. Guthrie. A probable cause affidavit was also filed on March 30, 1994, supporting the State of Indiana's request for the issuance of a warrant for Sweeney's arrest. That affidavit was executed by Det. Lt. Harold Kramer of the Clark County Sheriff's Department. The affidavit recited the following: (1) a missing person report had been filed by the wife of Daniel Guthrie on May 29, 1991; (2) Lt. Kramer was assigned to that investigation; (3) during the course of his investigation a pipe bomb was placed under Lt. Kramer's police vehicle; (3) Sweeney entered into a plea agreement with federal authorities on June 26, 1992, in connection with the pipe bomb incident; (4) on June 30, 1992, Sweeney advised federal authorities, among other things, that he had twice moved Guthrie's body and where Guthrie's body was then located; (5) Guthrie's body was thereafter found where Sweeney had indicated it was located; and (6) the cause of death of Daniel Guthrie was a single gunshot wound to the head. A warrant for Sweeney's arrest based on the foregoing as well as other information was issued on March 30, 1994. Sweeney was sentenced on the federal charges stemming from the pipe bomb incident on October 8, 1992. He was brought to Clark County from a federal facility in Kentucky and made his first court appearance in connection with the murder charge on August 17, 1994. At that time, Sweeney was appointed counsel and a trial date was set.

The information supplied by Sweeney during his interview with federal authorities on June 30, 1992, was

crucial to the commencement of the State's case and to each critical aspect of the prosecution thereafter.

Through his public defender, Sweeney filed a motion to suppress on October 28, 1994. This motion to suppress was directed, in part, to the statements made by Sweeney to federal authorities on June 30, 1992, and to evidence located as a result of statements made during the course of that interview. A hearing on the motion to suppress was held on November 10, 1994. The motion to suppress was denied, the trial court finding that:

- There was a misunderstanding between the State Prosecutor and Sweeney's federal defense team but there was no promise of or agreement to extend use immunity to Sweeney by the Prosecutor.

- Sweeney was sufficiently informed of his right not to give a statement by virtue of the fact that his defense counsel extensively discussed the concept of use immunity with him.

- Sweeney's reliance on Indiana Rule of Evidence 410 to preclude from evidence his statement was misplaced because there was no substantive alteration of Sweeney's plea in federal court, that is, the plea agreement was merely renegotiated to better achieve the parties' wishes rather than a withdrawal of the plea as contemplated by Rule 410;

- There was no deprivation of Sweeney's right to counsel.

On December 12, 1994, the Clark Circuit Court certified its ruling on Sweeney's motion to suppress, along with one other ruling, as appropriate for an interlocutory appeal. On February 1, 1995, the Indiana Court of Appeals refused to accept Sweeney's petition for interlocutory appeal.

Various other pretrial motions were filed in the trial court. Sweeney also sought federal habeas corpus relief pursuant to 28 U.S.C. §2241(c)(3) in a proceeding docketed as No. NA 95-197-C-B/H. This action was dismissed without prejudice on November 8, 1995. Sweeney also attempted to remove the state prosecution to federal court pursuant to 28 U.S.C. §1446, under Cause No. NA 95-198-C-B/H, which was dismissed on November 9, 1995.

Sweeney's murder trial commenced on November 14, 1995. The jury returned its verdict of guilty on November 21, 1995. Sweeney was sentenced on December 20, 1995. The Indiana Supreme Court affirmed Sweeney's conviction and sentence in *Sweeney v. State*, 704 N.E.2d 86 (Ind. 1998), *cert. denied*, 527 U.S. 1035 (1999). The sentence imposed for his conviction for murder, which is the conviction challenged in this action, will be served upon completion of the executed portion of the federal sentence.

B.

Sweeney's habeas claims advanced here are as follows: (1) his Fifth Amendment rights against self-incrimination were violated when a statement was taken in custodial interrogation without his first receiving the *Miranda* warning that any statement could be used against him; (2) his Fifth Amendment right against self-incrimination and right to counsel were violated when he

was given incorrect advice by counsel that his statements could not be used against him; and (3) his statement was not given voluntarily, because he was not forewarned that his statement could be used against him and because counsel erroneously advised him that his statement could not be used against him.

III.

A.

Sweeney's habeas claims are variations on a single there, to-wit: he was not *Mirandized* before giving his statement to federal agents on June 30, 1992, and thus the statements were not voluntarily made and should not have been admitted into evidence and the evidence obtained from those statements, including the locating of Guthrie's body, should not have been admitted. This becomes, as the Indiana Supreme Court noted, *Sweeney vs. State*, 704 N.E.2d at 103, Sweeney's claim that the trial court erred in its November 10, 1994, ruling denying Sweeney's motion to suppress, and presents the most recent chapter in the decade-long quest by Sweeney to defeat the charge and later his conviction for the murder of Daniel Guthrie. Only §2254(d) is implicated here, because Sweeney does not challenge the state court's adjudication on the grounds that it is based "on an unreasonable determination of the facts," as contemplated by 28 U.S.C. §2254(d)(2). Nor does there appear to be a basis for such a §2254(d)(2) challenge here, despite the contention that an agreement for use immunity had been reached between the Prosecutor of Clark County and Sweeney and his attorneys regarding information expected to be supplied by Sweeney during the debriefing of June 30, 1992, because state court factual finding are presumed to be correct unless the petitioner rebuts the

presumption with "clear and convincing" evidence. *Id.* No such factual rebuttal has been made here, so we indulge the presumption.

On direct appeal, the Indiana Supreme Court recited the relevant facts of the case as follows:

> The federal officials offered defendant a plea agreement whereby they would recommend a sentence reduction if defendant would provide the federal officials with certain kinds of information, the most relevant to this case being the location of Danny Guthrie's body. After this proposal was made, defendant's attorneys telephoned the Clark County prosecutor to advise the prosecutor of the agreement which had been offered by the federal officials, and asked if the prosecutor would give the defendant "use immunity" for any statements which were provided. What happened next is disputed. Defense counsel testified that, based on the fifteen minute telephone conversation, it was absolutely clear that a use immunity agreement existed. One of the defense attorneys advised defendant that any statements he made regarding the whereabouts of Guthrie's body could not be used against him in a criminal prosecution. Defendant then provided federal officials and a Clark County detective with his recollection of the events leading up to Guthrie's death. *Sweeney*, 704 N.E.2d at 103-104.

B.

We address the first question in light of the analysis required by §2254(d)(1): whether the decision of the Indiana Supreme Court was contrary to clearly established Federal

law as determined by the Supreme Court of the United States.

The "contrary to" standard requires a state court decision to be "substantially different from the relevant precedent of [the Supreme Court]." *Williams*, 529 U.S. at 405, 120 S. Ct. 1495 (concurring opinion of Justice O'Connor). For example, a state court decision applying a rule that contradicts the governing law set forth by the Supreme Court would qualify as "contrary to," as would a decision that involves a set of facts materially indistinguishable from a Supreme Court case that arrives at a different result. *Id.* at 405-406, 120 S. Ct. 1495. By contrast, a state court decision that draws from Supreme Court precedent the correct legal rule and applies it in a factually distinguishable situation will not satisfy the "contrary to" standard, no matter how misguided the decision's ultimate conclusion. *Id.* at 406-407, 120 S. Ct. 1495.

The Fifth Amendment to the Constitution guarantees that no person "shall be compelled in any criminal case to be a witness against himself." This guarantee is generally known as the Fifth Amendment privilege against compelled self-incrimination. This privilege is protected against abrogation by the States through the Fourteenth Amendment. *See Malloy v. Hogan*, 378 U.S. 1, 5, 84 S. Ct. 1489, 1492 (1964). As a necessary and integral component of the privilege against self-incrimination , the Supreme Court recognized in *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), that during custodial interrogation, "the right to have counsel present... is indispensable to the protection of the Fifth Amendment privilege." *Id.* at 469, 86 S. Ct. at 1625.

The Miranda warnings as such are not constitutionally protected rights, but rather they are a means

to insure protection of the right against self-incrimination. *Duckworth v. Eagan*, 492 U.S. 195, 203 (1989). The purpose of this prophylactic rule is to counter the inherently coercive effect of custodial interrogations. *Miranda*, 384 U.S. at 467, 86 S. Ct. at 1624; *see also Arizona v. Mauro*, 481 U.S. 520, 529-530 107 S. Ct. 1931, 1937 (1987) (noting that purpose behind Miranda was "preventing government officials from using the coercive nature of confinement to extract confessions that would not be given in an unrestrained environment").

In order for Sweeney to prevail in his principal claim under the "contrary to" prong of § 2254(d)(1), he must identify a decision in which the United States Supreme Court has held that statements made by, or information learned from, a person in a custodial setting, represented by counsel, could not thereafter be used by prosecuting authorities, even though neither the person's attorneys nor the interrogating officers had informed the person of the right to have counsel present before interrogation progressed. Because Sweeney has not identified such a decision, he cannot prevail under the "contrary to" prong, of § 2254(d)(1).

C.

This leaves for consideration the issue of whether the Indiana Supreme Court's decision "involved an unreasonable application" of *Miranda* and its Supreme Court progeny. 28 U.S. C. § 2254(d)(1). A state court decision will be deemed an "unreasonable application" of clearly established federal law "if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case. *Williams*, 529 U.S. at 413, 120 S. Ct. at 1523.

> When faced with the task of determining whether a particular application of Supreme Court precedent is unreasonable, we have often taken a more pragmatic approach to answering the question, scrutinizing the practical operation and effect of the principles at issue in the particular facts of the case. See, e.g. *Miller v. Anderson*, 255 F.3d 455, 456-59 (7th Cir. 2001); *Redmond v. Kingston*, 240 F.3d 590, 591-92 (7th Cir. 2001); *Washington v. Smith*, 219 F.3d 620, 627-35 (7th Cir. 2000). We ask whether the decision is "at least minimally consistent with the facts and circumstances of the case" or "if it is one of several equally plausible outcomes," *Hennon v. Cooper*, 109 F.3d 330, 335, (7th Cir. 1997); *Hall v. Washington*, 106 F.3d 742, 749 (7th Cir. 1997), granting a writ of habeas corpus if the determination is "at such tension with governing U.S. Supreme Court precedents, or so inadequately supported by the record, or so arbitrary" as to be unreasonable. *Hall*, 106 F.3d at 749.

Boss v. Pierce, 263 F.3d 734, 741-42 (7th Cir. 2001).

The Indiana Supreme Court has held that although Sweeney was in federal custody and was not advised of his *Miranda* rights, "under the circumstances of this case, we find that it was unnecessary for defendant to be advised of his *Miranda* rights." *Sweeney*, 704 N.E.2d at 104. The court's reasoning was explicated as follows:

> In *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966), the United States

> Supreme Court established several broad prophylactic rights in order to protect citizens interrogated while in custody. *See Allen v. State*, 686 N.E.2d 760, 769, (Ind. 1997). *Miranda* requires that defendants be advised of their right to an attorney, their right to remain silent, that their statements may be used against them in a court of law, and that the State will provide them with an attorney if they cannot afford one. *Allen*, 686 N.E.2d at 769. "The purpose of requiring Miranda warnings before custodial interrogation is to combat state-sanctioned coercion." *Id.* However, the warnings required by *Miranda* are "in the absence of a fully effective equivalent." *Miranda*, 384 U.S. at 444, 478, 86 S. Ct. 1602. *See Poulton v. State*, 666 N.E.2d 390, 392, (Ind. 1996). In this case, we believe that an equivalent to the advisement of *Miranda* rights existed. Defendant had two of his lawyers present when he provided the statements which he now wishes to suppress. Irrespective of the fact that the defense attorneys encouraged defendant to provide certain statements to federal authorities to solidify a plea agreement, certainly these attorneys advised defendant of his rights and protected defendant from being coerced by the State.

Id. at 104 (footnote omitted).

Was this decision an unreasonable application of *Miranda* and its progeny from the United States Supreme Court or was it at least minimally consistent with the facts and circumstances of the case or one of several equally plausible outcomes? The following considerations influence our analysis of Sweeney's statements to authorities on June 30, 1992:

- In its *Miranda* decision, the Supreme Court held that "[t]he warnings required and the waiver necessary in accordance with our opinion today are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant." 384 U.S. at 476, 86 S. Ct. at 1628. *See also Rhode Island v. Innis*, 446 U.S. 291, 297, 100 S. Ct. 1682, 1687 (1980) (referring to "the now familiar Miranda warnings... or their equivalent"). In *California v. Prysock*, 453 U.S. 355, 101 S. Ct. 2806 (1981) (per curiam), the Supreme Court stated that "the 'rigidity 'of *Miranda* [does not] exten[d] to the precise formulation of the warnings given a criminal defendant," and that "no talismanic incantation [is] required to satisfy it strictures." *Id.*, at 359, 101 S. Ct., at 2809. Thus, satisfaction of *Miranda*'s requirements does not turn on the precise formulation of warnings, but rather, on whether the "warnings reasonably 'convey to [a suspect] his rights.'" *Duckworth v. Eagan*, 492 U.S. 195, 203, 109 S. Ct. 2875, 2880 (1989) (quoting *Prysock*, 453 U.S. at 361, 101 S. Ct. at 2810).

- Thus, "a necessary element of compulsory self-incrimination is some kind of compulsion." *Hoffa v. United States*, 385 U.S. 293, 304, 87 S. Ct. 408, 414 (1966). *Miranda* forbids coercion, not strategic decisions such as whether and when to speak with authorities, and what information to relate if the decision to speak is made. "Coercion is determined from the perspective of the suspect." *Illinois v. Perkins*, 496 U.S. at 296, 110 S. Ct. 2394.

- As further recognized in *Miranda*: "[C]onfessions remain a proper element in law enforcement. Any

statement given freely and voluntarily without any compelling influence is, of course, admissible in evidence." 384 U.S. at 478, 86 S. Ct. at 1629.

- The questions of a "waiver" of Sweeney's *Miranda* rights is not the relevant issue. Sweeney's right to counsel was entirely *effectuated* as his defense team negotiated a resolution of the federal charge and included in that arrangements for Sweeney to be questioned on June 30, 1992.

- Sweeney's representation by counsel before and during the interrogation of June 30, 1992, and notably the presence of both his attorneys during that entire session, was *ipso facto* the "fully effective equivalent" of Sweeney's having (1) been without counsel on that occasion, (2) been fully informed of his *Miranda* rights, and (3) knowingly waived his right to counsel before questioning proceeded. Because of the presence and active participation of Sweeney's counsel, and Sweeney's own participation as recommended by his attorney, the analysis of his statements extends beyond the *Miranda* warnings/waiver issue. *See United States vs. Washington*, 431 U.S. 181, 188, 97 S. Ct. 1814, 1819 (1977) ("Indeed, it seems self-evident that one who is told he is free to refuse to answer questions is in a curious posture to later complain that his answers were compelled."). Sweeney invoked his right to counsel far in advance of the debriefing session of June 30, 1992, and the Indiana Supreme Court was entirely correct when it concluded that under the circumstances of this case, Sweeney's representation was the "fully effective equivalent" of *Miranda* warnings by the police. *Duckworth v. Eagan*, 492 U.S.

195, 203, 109 S. Ct. 2875, 2880 (1989) (explaining that satisfaction of Miranda does not turn on the precise formulation of the warnings, but rather, on whether the "warnings reasonably 'convey to [a suspect] his rights'") (quoting *California v. Prysock*, 453 U.S. 355, 361, 101 S. Ct. 2806, 2810 (1981)).

- To the extent that Sweeney was mislead concerning the use (or non-use) of statements he made during the debriefing of June 30, 1992, the advice nonetheless came from his attorneys. Sweeney's decision to supply information to authorities on June 30, 1992, cannot be construed as coerced in any sense. *Miranda* does not require that suspects make decisions which are ultimately in their best interests, nor does it prohibit decisions simply because they are difficult, nor that the decisions to provide information are strategically correct.

Sweeney's Fifth Amendment *Miranda* claim thus fails to support the issuance of writ of habeas corpus, under the "reasonable application" prong of a § 2254(d)(1) analysis.

D.

Sweeney also contends that his statements to authorities on June 30, 1992, were not voluntary because he was mislead concerning the use for which the information he supplied could be made by the Clark County Prosecutor.

As with the *Miranda* claim discussed above, Sweeney has offered no controlling Supreme court decision in support of his claim of error regarding whether his statements on June 30, 1992, should have been excluded from evidence because they were not voluntarily made. He also does not

challenge the state court adjudication of this claim as having been based on an unreasonable determination of the facts. Accordingly, the pivotal question becomes whether the Indiana Supreme Court's resolution of the claim involved an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States. 28 U.S.C. §2254 (d)(1).

In *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S. Ct. 515, 521 (1986), the Supreme Court held that "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." The Supreme Court additionally held:

> There is obviously no reason to require more in the way of a "voluntariness" inquiry in the Miranda Waiver context than in the Fourteenth Amendment confession context. The sole concern of the Fifth Amendment, on which Miranda was based, is government coercion.... The voluntariness of a waiver of [the privilege against self-incrimination] has always depended on the absence of police overreaching, not on "free choice" in any broader sense of the word.

Connelly, 479 U.S. at 169-170, 107 S. Ct. at 523.

Factors that have been deemed relevant to a determination of voluntariness are the defendant's age, education, intelligence level, and mental state; the length of the defendant's detention; the nature of the interrogations; the inclusion of advice about constitutional rights; and the use of physical punishment, including deprivation of food or sleep. *See United States v. Brooks*, 125 F.3d 484, 492 (7th Cir.

1997). Here, there were no circumstances suggesting that Sweeney's statements on June 30, 1992, were the product of coercive police activity. To the contrary: Sweeney was in the driver's seat with respect to the information he was providing - - information which solidified his plea arrangements in federal court and which he believed would not be used as a basis for any criminal prosecution under Indiana state law with respect to Daniel Guthrie. A confession is voluntary "if the totality of the circumstances demonstrates that it was the product of rational intellect and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics calculated to overcome the defendant's free will." *Watson v. DeTella*, 122 F. 3d 450, 453 (7th Cir. 1997) (citations omitted). That is precisely the character of Sweeney's statements to interrogating officers on June 30, 1992.

It is true, of course, that "[a] false promise of lenience would be an example of forbidden tactics, for it would impede the suspect in making an informed choice as to whether he was better off confessing or clamming up," *United States v. Baldwin*, 60 F.3d 363, 365 (7th Cir, 1995), *vacated and remanded on other grounds*, 517 U.S. 1231, 116 S. Ct. 1873 (1996), and the same could be said of a false promise of use immunity. But the trial court found in its ruling of November 10, 1994, that there was a "misunderstanding" concerning the existence of an agreement for use immunity, and this finding of a "misunderstanding" is inconsistent with Sweeney's argument that his incriminating statements were involuntary because of deception by the State of Indiana. Sweeney's *belief* that a use immunity agreement had been reached does not establish that such an agreement was in fact reached, and the state court's findings reflect the opposite. Sweeney's statements on June 30, 1992, thus were not involuntary, and the Indiana Supreme Court's finding

that Sweeney's statements were not the product of coercion by police, *Sweeney v. State*, 704 N.E.2d at 104, was not an unreasonable application of clearly established Federal law as determined by the Supreme Court of the United States. Sweeney's claim of involuntariness rests on the alleged misinformation he received from his attorneys, but that misinformation, even if true, does not satisfy the constitutional test because it was not part of or the result of coercive police activity.

E.

To the extent Sweeney asserts an ineffective assistance of counsel claim, it arises under the Sixth Amendment to the Constitution. The Indiana Supreme Court considered Sweeney's claim that he had been denied effective assistance of counsel. The court, properly in our view, rejected this claim because at the time Sweeney provided statements to the authorities regarding the location of Guthrie's body, no state charges had been filed for the murder of Guthrie. The Indiana Supreme Court relied on *United States v. MacDonald*, 966 F.2d 854, 859, n.9 (4th Cir. 1992), for the proposition that if no Sixth Amendment right to counsel attaches to a proceeding, no ineffective assistance claim can be sustained. *MacDonald*, in turn, relied on *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987), for the principle that prisoners have no right to counsel in a collateral proceeding. This reasoning was not contrary to established federal law, nor was it an unreasonable application thereof; the Sixth Amendment right to counsel attaches only at the initiation of adversary criminal proceedings, *see United States v. Gouveia*, 467 U.S. 180, 188, 104 S. Ct. 2292, 2297 (1984), and before proceedings are initiated, a suspect in a criminal investigation has no right under the Sixth Amendment to the assistance of counsel.

The Supreme Court has explained that "counsel's ineffectiveness will constitute cause only if it is an independent constitutional violation," *Coleman v. Thompson*, 501 U.S. at 755, 111 S. Ct. at 2552, so there could be no ineffectiveness of counsel argument predicated on the performance of counsel at a time when the Sixth Amendment right to counsel was not in effect. *Montgomery v. Meloy*, 90 F.3d 1200, 1206, (7th Cir.), *cert. denied*, 117 S. Ct. 266 (1996). We will not reverse the Indiana Supreme Court's reasonable application of United States Supreme Court precedent with regard to ineffective assistance of counsel claims.

IV.

A §2254 claim must allege a "fundamental defect which inherently results in a complete miscarriage of justice (or) an omission inconsistent with the rudimentary demands of fair procedure." *DeBerry v. Wolff*, 513 F.2d 1336, 1338, (8th Cir. 1975) (citing *Hill v. United States*, 368 U.S. 424, 428 (1962)). "A defendant whose position depends on anything other than a straightforward application of established rules cannot obtain a writ of habeas corpus." *Liegakos v. Cooke*, 106 F.3d 1381, 1388 (7th Cir. 1997). Sweeney has not succeeded in making the requisite showing in this case. Accordingly, his petition for a writ of habeas corpus is **DENIED** and this action is dismissed with prejudice. Judgment consistent with this Entry shall now issue.

IT IS SO ORDERED.

/s/ Sarah Evans Barker
SARAH EVANS BARKER
Judge, United States District Court

Date: February 27, 2002

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

CHARLES SWEENEY, JR., PETITIONER	)	
VS.	)	NO. NA 00-72-C-B/S
STEVE CARTER, RESPONDENT	)	

ENTRY

The petitioner's motion to reconsider filed on March 8, 2002, was filed within ten (10) working days from the entry of judgment on the clerk's docket on February 27, 2002.

Rule 59(e) "authorizes relief when a moving party 'clearly establish[es] either a manifest error of law or fact' or 'present[s] newly discovered evidence.'" *Souter v. International Union*, 993 F.2d 595, 599 (7th Cir. 1993) (quoting *Federal Deposit Ins. Corp. v Meyer*, 781 F.2d 1260, 1268 (7th Cir. 1986)). There was in this case no manifest error of law of fact. *See Russell v. Delco Remy Div. of General Motor Corp.*, 51 F.3d 746, 749 (7th Cir. 1995). The court did not misapprehend the petitioner's claims, nor did it misapply the law to those claims. The petitioner's focus on whether his statement to interrogating officials was voluntary is unavailing because, as noted in the court's decision, "there were no circumstances suggesting that Sweeney's statements on June 30, 1992, were the product of coercive police activity." The petitioner's post-judgment motion also suggests that the court failed to make a correct *Fifth Amendment* analysis of the petitioner's right to counsel during his interrogation. Hardly. The interrogation was a scheduled event, an

important part in a carefully orchestrated program to extricate the petitioner from the extreme edges of the criminal activity which had produced the federal prosecution. And far from being deprived counsel in this setting, the petitioner was accompanied by and assisted by his two attorneys, fully aware of the circumstances. His attorneys guided him through the interview. His subsequent regret over the use of the information he supplied does not render his statements involuntary, and certainly does not indicate that authorities deprived him of his Fifth Amendment right to counsel before or during the interrogation.

For these reasons, therefore, the petitioner's motion to alter or amend judgment is **denied**.

IT IS SO ORDERED.

/s/ Sarah Evans Barker
SARAH EVANS BARKER
Judge, United States District Court

Date: April 4, 2002

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

August 30, 2002

Before

HON. DIANE P. WOOD, *Circuit Judge*

NO. 02-2165

CHARLES E. SWEENEY, JR.,
Petitioner-Appellant,

VS.

STEVE CARTER,
Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, New Albany Division

No. NA 00-72-C-B/S

Sarah Evans Barker,
Judge

ORDER

Charles Sweeney has filed a notice of appeal from the denial of his petition under 28 U.S. C. §2254, which we construe as an application for certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find that Sweeney has made a

substantial showing of the denial of a constitutional right as to the following issue:

Whether Sweeney's counsel provided ineffective assistance when erroneously advising him that he had "use immunity" and that he should cooperate with the government and give a complete statement regarding the murder of Daniel Guthrie.

See McNeil v. Wisconsin, 501 U.S. 171 (1991); *Strickland v. Washington*, 466 U.S. 668 (1984); *see also* 28 U.S.C. §2553(c)(2).

Accordingly, the request for a certificate of appealability is GRANTED. Finally we appoint counsel to file an amicus brief for this appeal. A separate order will issue naming counsel and setting a briefing schedule.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

October 3, 2002

Before

HON. MICHAEL S. KANNE, *Circuit Judge*

HON. DIANE P. WOOD, *Circuit Judge*

NO. 02-2165

CHARLES E. SWEENEY, JR.,
Petitioner-Appellant,

Motion for
Reconsideration

v.

STEVE CARTER,
Respondent-Appellee.

ORDER

Charles Sweeney's motion for reconsideration of this court's August 30, 2002, order granting a certificate of appealability on only one of his claims is DENIED. We also DENY Sweeney's request to hold his motion for reconsideration in abeyance.